IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 16-12-2006

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THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

WRIT PETITION No.33184 OF 2004

J.Jeelani ... Petitioner

-vs-

1.The Senior Divisional Manager,
Life Insurance Corporation of India,
Jeevan Prakash, Arcot Road,
Vellore District.

2.The Zonal Manager,
Life Insurance Corporation of India,
Southern Zonal Office,
LIC Building, Anna Salai,
Chennai - 2.

3.The Chairman,
Life Insurance Corporation of India,
Central Office,
Yogashema Jeevan Bima Marg,
Post Box No.19953,
Mumbai - 400 021. ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari calling for the records of the third respondent dated 28/09/2004 in confirming the orders of the respondents dated 31/12/2003 and 6/10/1998 respectively relating to the petitioners agency Code No. 58871C Tirupattur branch, Vellore District, and quash the order dated 28/09/2004.

For petitioner : Mr.G.Jermiah
For respondents : Mr.T.Ravikumar

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O R D E R

Petitioner was appointed as an agent in the Life Insurance Corporation of India in March,1988, and he has received appreciation for doing good business.

2. The case of the petitioner is that there are Co-operative Urban Banks near Tirupattur, where the amount earmarked for payment of gratuity to employees is plughed back into the bank and utilised for giving loan to its members, thereby earning additional interest. Some other banks invested the money earmarked for payment as gratuity to its

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employees in National Savings Certificate and if the employee retires or dies while in service, he is paid Rs.50,000/- out of the corpus to the employee or the family as gratuity payment.

3. The contention of the petitioner is that as an LIC Agent and in order to promote business for LIC, he suggested the management of Thiruvannamalai Cooperative Urban Bank to utilise the money, which is lying in their possession for taking an LIC policy for Rs.50,000/- for each employee and the said policy is assigned in favour of the Special Officer of the Bank. The said suggestion was discussed by the management of the bank and they agreed for the proposal and they have decided to take 25 individual policies in the names of the employees of the said bank and it was brought to the notice of the higher officials of the LIC, who also encouraged the same. There is an official correspondence between the LIC Officials and the said Co-operative Society. Accordingly, the receipt for premium amount in respect of 25 policies for its employees was received by the bank and the bank paid the amount by way of demand draft to LIC and acceptance was confirmed by the Deputy Registrar.

4. While so, the petitioner received notice from the Senior Divisional Manger of LIC calling for an explanation regarding introduction of 25 employees of the said bank to LIC policies and the petitioner misguided and misappropriated the funds. The petitioner gave an explanation. A show cause notice was issued on 04.03.1997. The petitioner sent another reply on 26.03.1997, but the respondents, without accepting the same, terminated the agency by an order dated 27.08.1997. The petitioner preferred an appeal under Section 16 of the Life Insurance Corporation of India Act, 1972, and the second respondent dismissed the same without assigning any reasons. Then, he filed W.P.No.16354 of 1999 and the same was allowed, directing the second respondent to hear the petitioner and pass orders. The second respondent again dismissed the appeal of the petitioner by his order dated 31.12.2003, holding that he misled the bank towards Group Insurance Scheme, against which he preferred an appeal to the third respondent as per the rules and the third respondent, without considering his contention, rejected the same. Therefore, the petitioner has filed the present writ petition.

5. The counter of LIC discloses that the respondents have received a complaint from Special Officer of Co-operative Bank, Thiruvannamalai, that individual policies were issued by the petitioner with the amount attached for payment of gratuity instead of starting a Group Gratuity Insurance Scheme and as per the joint letter of the employees, the employer is to deposit the amount in Group Gratuity Scheme and the same is misused in individual policies of the employees. The employees have requested for refund of the amount paid as insurance premium.

6. The respondents state that the petitioner has procured 25 individual policies in the names of 25 employees and thereafter the LIC has received a complaint and the illegality committed by the petitioner is, issuance of individual policies in the names of employees instead of issuing Master Policy under Group Gratuity Insurance Scheme. On the basis

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of the complaint through the employees and from the Special Officer of the Co-operative Bank, an enquiry was conducted and the petitioner has admitted that he has canvassed for group gratuity scheme with the employees of the Co-operative Urban Bank, Thiruvannamalai, but has given proposals for individual policies and this act amounts to misconduct. It is also stated that the petitioner made the employees of the bank to believe that they are joining the Group Gratuity Scheme and by suppressing all the facts, he made LIC to issue individual policies and it amounts to act of fraud and the petitioner is benefited by the rate of commission, as the commission paid for group gratuity also varies from 0.5% to 7.5%, whereas for the individual policies, it is more than 25%.

7. The contention of the respondents is to claim more commission, the petitioner has issued 25 individual policies than one group policy.

8. Heard the arguments of both sides.

9. Perused the relevant documents.

10. The short points for determination are, (i) whether the act of the petitioner amounts to misconduct ? and (ii) whether the petitioner is liable to be terminated from service ?

11. In the impugned order, it is stated that the petitioner has misguided the authorities of the bank and also the LIC on the subject of providing gratuity to the employees of the bank and instead of taking a group policy, individual policies have been taken, to gain more commission.

12. The bank mainly relies on the resolution of the Co-operative Bank, dated 11.02.1976, which says that Co-operative Societies must opt for Group Gratuity Life Insurance Scheme.

13. Perused the letter from the employees addressed to the Special Officer, dated 22.04.1996, which shows that the premium amount of the employees has been paid to the Life Insurance Corporation under Group Insurance Scheme from the years 1990-91 to 1994-95, but no receipt has been issued by the Life Insurance Corporation and instead of debiting the premium amount under the Group Insurance Scheme, the LIC has debited the same in the names of the individuals and issued individual policies and it is a loss to the employees. The contents of this letter disclose that the resolution of the Co-operative Societies was on 11.02.1976 and thereafter in 1990-91, the policies are taken.

14. But the forceful contention of the petitioner is that he is only an agent and he made a suggestion and the Branch Manager has addressed a letter to the Secretary and Administrator of the Bank on 26.07.1990 itself, thanking for receiving the D.D.for Rs.77,166.40 ps.towards premium under 25 new proposals of their employees.

15. Therefore, it is clear that everything is done with the

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knowledge of the other officials of Corporation and it is not correct to state that the petitioner alone is responsible for the misconduct. However, the petitioner is not expected to take 25 individual policies instead of one group policy and it is for the simple reason that he will gain more commission.

16. Considering the same, the Court is of the opinion that there is a misconduct on the part of the petitioner, but it is not a serious one, attracting moral turpitude, and hence the punishment of dismissal is disproportionate.

17. In the above circumstances, this Writ Petition is partly allowed, holding that the petitioner is guilty in issuing 25 individual policies rather than one group policy. But, the punishment of termination from service is on high side and it is disproportionate. Therefore, the termination is quashed and the respondents are directed to take back the petitioner into service without any back wages, treating him as the junior most in the service and thereby the punishment imposed is that the rank of the petitioner is lowered down in service.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Senior Divisional Manager,
LIC of India, Jeeven Prakash,
Arco Road,, Vellore, Vellore District.

2. The Zonal Manager, LIC of India,
Southern Zonal Office, LIC Building,
anna Salai, Chennak -2.

3. The Chairman,
LIC of India, Central office,
Yogashesma Jeevan, Bima Marg,
Post Box No 19953, Mumbai 400021.

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